

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Glenn Brown	Team: Team # 1	CCRB Case #: 201401027	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/01/2014 12:20 PM	Location of Incident: 2246 Forest Avenue	Precinct: 121	18 Mo. SOL 8/1/2015	EO SOL 8/1/2015	
Date/Time CV Reported Sat, 02/01/2014 5:58 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 02/01/2014 5:58 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Cimmino	11712	933693	121 PCT
2. SGT Denis Samuylin	03457	935680	121 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Genaro Barreiro	00308	950050	121 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Anthony Cimmino	Abuse: PO Anthony Cimmino stopped the car in which § 87(2)(b) was an occupant.	
B.POM Anthony Cimmino	Discourtesy: PO Anthony Cimmino spoke discourteously to § 87(2)(b)	
C.POM Anthony Cimmino	Discourtesy: PO Anthony Cimmino acted discourteously toward § 87(2)(b)	
D.POM Anthony Cimmino	Abuse: PO Anthony Cimmino issued a summons to § 87(2)(b)	
E.SGT Denis Samuylin	Abuse: Sgt. Denis Samuylin failed to supervise an officer as required by Patrol Guide Procedure 202-17.	

Case Summary

On February 1, 2014, at approximately 12:20 pm, PO Anthony Cimmino pulled over and stopped § 87(2)(b)'s vehicle in the parking lot of 2246 Forest Avenue in Staten Island (**Allegation A**). During the interaction, PO Cimmino used profanity (**Allegation B**) and threw § 87(2)(b)'s license, registration, and summons onto his windshield (**Allegation C**) (complaint encl. B2-9, statement encl. B10-16). The investigation determined that § 87(2)(b) was improperly issued a summons for disorderly conduct (**Allegation D**) and that § 87(2)(g), § 87(4-b)

Mediation, Civil, and Criminal Histories

§ 87(2)(b) declined to have his complaint mediated. § 87(2)(b) has not filed a Notice of Claim with the City of New York as of December 5, 2014 with regard to the incident (encl. E1). On May 19, 2014 the summons § 87(2)(b) was issued during this incident, § 87(2)(b) was dismissed (encl. F11). § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (encl. A4).
- PO Cimmino has been a member of the service for 10 years and there are two substantiated CCRB allegations against him (encl. A1-2).
- Sgt. Samuylin has been a member of the service for 10 years and there are no substantiated CCRB allegations against him (encl. A3).

Findings and Recommendations

Explanation of Subject Officer Identification

PO Cimmino and Sgt. Samuylin acknowledged interacting with § 87(2)(b)

Investigative Findings and Recommendations

- **Allegation A) Abuse of Authority: PO Anthony Cimmino stopped the car in which § 87(2)(b) was an occupant.**

It is undisputed that PO Cimmino stopped § 87(2)(b) inside of A & J Tire's parking lot. § 87(2)(g)

§ 87(2)(b) stated that he pulled into A & J Tire, parked in a legal parking spot, and got out of his vehicle. Within two to three minutes, a marked police vehicle pulled up behind him and PO Cimmino instructed him to get back in his vehicle. PO Cimmino then requested his license and registration, which § 87(2)(b) provided. § 87(2)(b) who had been in the parking lot standing outside his own vehicle before § 87(2)(b) arrived and who described himself as § 87(2)(b)'s neighbor, stated that "several minutes" passed between the time that § 87(2)(b) entered the parking lot and that the police vehicle entered. § 87(2)(b) also stated that § 87(2)(b) stayed inside of his vehicle (encl. B19-22). However, in § 87(2)(b)'s phone statement, he said that § 87(2)(b) exited his vehicle immediately, before the police arrived (encl. B18). § 87(2)(b) a customer of A & J Tire who did not know § 87(2)(b) stated that § 87(2)(b) immediately exited his vehicle and walked to its rear in order to speak with the police officers (encl. B23-26).

PO Cimmino and Sgt. Samuylin both stated that they passed § 87(2)(b) on the road, driving in the opposite direction and observed that his vehicle did not have a front license plate (encl. C1-10, C11-18). Both officers also saw that there were what appeared to be two registration stickers in the lower driver's side corner of § 87(2)(b)'s windshield. This led both officers to think that the vehicle was a New York State vehicle that was missing its front license plate. PO

Cimmino, the driver of the marked police vehicle, performed a U-turn, activated the turret lights and observed § 87(2)(b) pull into A & J Tire. PO Cimmino pulled up behind § 87(2)(b)'s vehicle and both Sgt. Samuylin and PO Cimmino saw, for the first time, that § 87(2)(b)'s vehicle had a Pennsylvania license plate affixed to the rear of the vehicle. As soon as PO Cimmino pulled up behind § 87(2)(b)'s vehicle, PO Cimmino stated that § 87(2)(b) immediately got out of his vehicle and started yelling at the officers, which is what led to further police action with § 87(2)(b). PO Cimmino stated that he got out of his vehicle, ordered § 87(2)(b) to get back inside his vehicle and then requested his license, registration and insurance information. Sgt. Samuylin and PO Barreiro (who was also in the police vehicle with PO Cimmino and Sgt. Samuylin) both stated that § 87(2)(b) remained inside his vehicle when he was pulled over (encl. C19-25).

People v. Taylor, 31 A.D.3d 1141 (NY App. Div. 2006) (encl. i-ii) holds that officers must have reasonable suspicion that an individual has committed, is committing or is about to commit a crime in order to stop his vehicle. *NYS VTL §402.1* (encl. iii) requires that all legally registered vehicles in New York State have a license plate affixed to both the front and rear of a motor vehicle. *Pennsylvania State Vehicle Code Chapter 47.2* (encl. iv-vi) allows for vehicles registered in Pennsylvania State to have a single license plate affixed to the rear of a vehicle.

§ 87(2)(b), § 87(2)(g)

• **Allegation B) Discourtesy: PO Anthony Cimmino spoke discourteously to § 87(2)(b)**

All four of the civilians interviewed alleged that PO Cimmino used some variant of the word “fuck” during his initial interaction with § 87(2)(b). § 87(2)(b) alleged that PO Cimmino said, “Shut the fuck up,” and “I don’t care about your fucking son.” § 87(2)(b) alleged that the remark was, “Shut the fuck up. License and registration,” or “Shut the fuck up and return to your vehicle,” and § 87(2)(b) who was walking by on the sidewalk and who was acquainted with § 87(2)(b) from his work at the Trinidad and Tobago embassy where he had helped her with her passport application in the past, stated PO Cimmino said, “I don’t care about your fucking son,” (encl. B27-29). Furthermore, § 87(2)(b) an independent witness who did not know § 87(2)(b) and was only identified via A & J Tire’s credit card receipts from around the time of the incident, alleged that PO Cimmino told § 87(2)(b) “Get back in the fucking car,” or “Stay in your fucking car,” or something to that effect.

All three of the officers denied that PO Cimmino made any of these specific remarks or used any profanity at any point.

§ 87(2)(b), § 87(2)(g)

Patrol Guide Procedure 203-09 (encl. vii) requires that officers be courteous and respectful when interacting with members of the public.

§ 87(2)(g)

§ 87(2)(g)

• **Allegation C) Discourtesy: PO Anthony Cimmino acted discourteously toward** § 87(2)(b)

§ 87(2)(b) alleged that at the conclusion of the incident, PO Cimmino walked over to his vehicle, threw § 87(2)(b)'s documentation and a disorderly conduct summons onto the hood of his vehicle and said, "Deal with that." § 87(2)(b) and § 87(2)(b) also stated that PO Cimmino threw some documentation onto the hood of § 87(2)(b)'s vehicle. § 87(2)(b) left A & J Tire before the incident concluded and was not present for the time of this allegation.

PO Cimmino, PO Barreiro, and Sgt. Samuylin all denied that PO Cimmino threw § 87(2)(b)'s documents onto the hood of the vehicle.

§ 87(2)(b), § 87(2)(g)

Patrol Guide Procedure 203-09 (encl. vii) requires that officers be courteous and respectful when interacting with members of the public.

§ 87(2)(b), § 87(2)(g)

• **Allegation D) Abuse of Authority: PO Anthony Cimmino issued a summons to** § 87(2)(b)

§ 87(2)(b) alleged that once he had given PO Cimmino his documentation, PO Cimmino instructed him to exit his vehicle and that § 87(2)(b) complied. PO Cimmino then instructed § 87(2)(b) to go to the rear of his vehicle and § 87(2)(b) declined several times to do so because he wanted to stay in sight of his son. PO Cimmino and Sgt. Samuylin returned to the police vehicle and several minutes later PO Cimmino returned with a disorderly conduct summons for § 87(2)(b). § 87(2)(b) said that some people in the parking lot attempted to talk to the officers, including the tire shop's owner, but the tire shop's owner simply requested that the officers move their vehicle.

§ 87(2)(b) said that only the tire shop's owner approached the officers and asked them to move their vehicle, but otherwise no one approached the officers. Furthermore, the customers who were at the tire shop did not gather around the police vehicle or otherwise change their positions in the parking lot during the time that the officers were present. No civilians shouted at the officers or complained about § 87(2)(b)'s treatment.

§ 87(2)(b) stated that no one in the tire shop attempted to speak to the officers and that § 87(2)(b) never spoke to anyone in the parking lot aside from the officers. § 87(2)(b) did not see any civilians attempt to interact with any of the officers.

PO Cimmino stated that as soon as he entered the parking lot, § 87(2)(b) exited his vehicle immediately, waved his arms violently above his head and screamed, "Why did you stop me? Why did you stop me?" It was at this moment that PO Cimmino considered § 87(2)(b) to be in violation of disorderly conduct, subsection one, for violent/threatening behavior. PO Cimmino then instructed § 87(2)(b) to return to his vehicle more than two times, after which § 87(2)(b) got back into the driver's seat of his vehicle. PO Cimmino also asked § 87(2)(b) to roll down his rear windows several times and § 87(2)(b) did not at first, but eventually complied with this instruction.

During PO Cimmino's CCRB interview, when he was presented with a copy of the summons and saw that it was for disorderly conduct, subsection six, PO Cimmino said that § 87(2)(b) was also in violation of subsection six because he disobeyed a lawful order. Seeing the summons refreshed PO Cimmino's recollection and he realized that he decided to issue § 87(2)(b) a disorderly conduct summons when § 87(2)(b) to get back into his vehicle.

The narrative on the summons stated that PO Cimmino ordered § 87(2)(b) to get back into his vehicle and to roll down his back windows numerous times, but § 87(2)(b) to do so. PO Cimmino also noted on the summons that it was issued for “disobey PO order.”

Sgt. Samuylin stated that some pedestrians on the street stopped to watch § 87(2)(b) and that some of the customers in the parking lot moved slightly closer to watch, but that he did not hear them say anything. PO Barreiro stated that § 87(2)(b) complained to some of the customers in the parking lot, but that only the tire shop’s owner approached the officers and asked that they move their vehicle.

An officer may summons an individual for an offense when he or she has reasonable cause to believe that such person committed an offense in their presence. NY CPL §150.20 (1); §140.10 (1)(a) (encl. viii-ix). A person commits disorderly conduct when with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he engages in fighting or in violent, tumultuous or threatening behavior or he congregates with other persons in a public place and refuses to comply with a lawful order to disperse. NYS Penal Law §240.20(1),(6) (encl. x). The disorderly conduct statute is aimed at conduct which incites or risks inciting “a breach of the peace” or “public disturbance” and applied to situations which carry beyond individual disputants and becomes a public concern. People v. Square, 20 Misc.3d 1126A (N.Y. Cty. Crim. Ct. 2008) (encl. xi-xiv). According to People v. Square, “The mere expression that one feels aggrieved by the police—even when uttered in a loud voice—cannot constitute an offense.” Id.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

- **Allegation E) Abuse of Authority: Sgt. Denis Samuylin failed to supervise an officer as required by Patrol Guide Procedure 202-17.**

It is undisputed that Sgt. Samuylin was present for the duration of PO Cimmino’s interaction with § 87(2)(b) and was aware of all of the police action that PO Cimmino took. § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Patrol Guide Procedure 202-17 requires that Patrol Supervisors supervise all police field operations within their command and supervise individual officers’ performance of duty (encl. xv-xvi).

§ 87(2)(g)

Team: 1

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date